

**In re: DALE GOODALE.
AWA Docket No. 01-0006.
Remand Order.
Filed December 11, 2001.**

Animal welfare – Dealer – Remand.

The Judicial Officer vacated Chief Administrative Law Judge James W. Hunt's (Chief ALJ) default decision and remanded the proceeding to the Chief ALJ to give Respondent a hearing.

Brian Thomas Hill, for Complainant.
Respondent, Pro se.

Initial decision issued by James W. Hunt, Chief Administrative Law Judge.
Remand Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on October 23, 2000. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that: (1) on or about September 6, 1997, and continuing through July 25, 1999, Dale Goodale [hereinafter Respondent] operated as a dealer as defined in the Animal Welfare Act and the Regulations without being licensed, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)); (2) Respondent sold, in commerce, at least 194 dogs for resale for use as pets; and (3) the sale of each animal constitutes a violation (Compl. ¶ IIC).

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on October 28, 2000.¹ Respondent failed to answer the Complaint within 20 days after service as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)).² On November 22, 2000, the Hearing Clerk sent

¹United States Postal Service Domestic Return Receipt for Article Number P368327607.

²Respondent contends he filed a timely answer to the Complaint. The record contains a copy of a letter, dated November 14, 2000, from Respondent, which Respondent contends is his timely-filed answer. (Respondent's Objection to the Proposed Decision and Order; Respondent's letter filed October 15, 2001 [hereinafter Appeal Petition].) Section 1.147(g) of the Rules of Practice (7 C.F.R. § 1.147(g)) provides that the effective date of filing an answer is the date the answer reaches the Hearing Clerk. The record contains nothing which indicates Respondent's November 14, 2000, letter

a letter to Respondent informing him that his answer to the Complaint had not been received within the time required in the Rules of Practice.³

On March 14, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Adoption of Proposed Decision and Order” [hereinafter Motion for Default Decision] and a “Proposed Decision and Order Upon Admission of Facts by Reason of Default” [hereinafter Proposed Default Decision]. Complainant’s Proposed Default Decision includes a proposed finding that Respondent, “at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations” and an apparently inconsistent proposed finding that “[o]n or about September 6, 1997, and continuing through July 25, 1999, respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 2.1(a)(1) of the regulations (9 C.F.R. § 2.1(a)(1))” (Proposed Default Decision at third unnumbered page). Complainant does not explain these apparently inconsistent proposed findings in any filing in this proceeding. Moreover, Complainant’s Proposed Default Decision includes a perplexing proposed order which states “Respondent is disqualified from obtaining a license is suspended for a period of one year” (Proposed Default Decision at fourth unnumbered page).

On April 9, 2001, Darrell J. Isaacson of Mason City, Iowa, entered an appearance on behalf of Respondent and filed “Respondent’s Objection to the Proposed Decision and Order” and a copy of a letter dated November 14, 2000, which Respondent contends is his timely-filed answer to the Complaint.

On August 24, 2001, Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] issued an “Order to Show Cause” directing the parties to show cause, by September 24, 2001, why Respondent’s November 14, 2000, letter should not be considered timely filed and, if not timely filed, whether there was good cause for Respondent’s answer not being timely filed. On September 14, 2001, Complainant filed “Memorandum to Show Cause” stating that Complainant’s Proposed Default Decision should be adopted and Respondent’s Objection to the Proposed Decision and Order should be denied. Respondent did not file any response to the Chief ALJ’s Order to Show Cause, and on September 26, 2001, the Chief ALJ issued an “Order Denying Respondent’s Objections to Complainant’s Proposed Decision and Order.”

On September 26, 2001, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Chief ALJ issued a “Decision and Order Upon Admission of Facts By Reason of Default” [hereinafter Initial Decision and Order]: (1) finding that “[t]he respondent, at all times material herein, was licensed and operating as a

reached the Hearing Clerk within 20 days after the Hearing Clerk served Respondent with the Complaint. Therefore, I find Respondent’s answer was not timely filed.

³ Letter dated November 22, 2000, from Joyce A. Dawson, Hearing Clerk, to Dale Goodale.

dealer as defined in the Act and the regulations[;]" (2) finding that "[o]n or about September 6, 1997, and continuing through July 25, 1999, respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 2.1(a)(1) of the regulations (9 C.F.R. § 2.1(a)(1))[;]" (3) finding that Respondent sold, in commerce, at least 194 dogs for resale for use as pets and that the sale of each animal constitutes a separate violation; (4) directing Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards;⁴ (5) assessing Respondent a \$67,500 civil penalty; and (6) stating that "Respondent is disqualified from obtaining a license is suspended for a period of one year" (Initial Decision and Order at second and third unnumbered pages). The Chief ALJ does not explain the apparently inconsistent findings that Respondent had an Animal Welfare Act license at all times material to this proceeding and that on or about September 6, 1997, and continuing through July 25, 1999, Respondent operated as a dealer as defined in the Animal Welfare Act and the Regulations, without being licensed, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)). Moreover, the Chief ALJ does not explain what I find to be a perplexing statement in his Order: "Respondent is disqualified from obtaining a license is suspended for a period of one year[.]"

On October 15, 2001, Respondent appealed to, and requested oral argument before, the Judicial Officer.⁵ Complainant failed to file a timely response to Respondent's Appeal Petition, and on December 7, 2001, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Respondent's request for oral argument and a decision.

Respondent's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit,⁶ is refused because I vacate the Chief ALJ's Initial Decision and Order and remand this proceeding to the Chief ALJ for further proceedings. Therefore, oral argument before the Judicial Officer at this point in the proceeding would be premature and would appear to serve no useful purpose.

BASIS FOR REMAND ORDER

Based upon a careful consideration of the record, the Chief ALJ's Initial

⁴The Chief ALJ's reference to the "Standards" is a reference to the standards issued under the Animal Welfare Act (9 C.F.R. §§ 3.1-.142) [hereinafter the Standards]. Complainant did not allege that Respondent violated the Standards and the Chief ALJ did not conclude that Respondent violated the Standards.

⁵Respondent states that Darrell J. Isaacson no longer represents him and that he is proceeding pro se (Appeal Pet. at 1).

⁶7 C.F.R. § 1.145(d).

Decision and Order is vacated and the proceeding is remanded to the Chief ALJ to issue a decision and order on remand. Generally, there is no basis for setting aside a default decision based on a respondent's failure to file a timely answer.⁷

⁷ See generally *In re Beth Lutz*, 60 Agric. Dec. 53 (2001) (holding the default decision was properly issued where the respondent filed her answer 23 days after she was served with the complaint and 3 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Curtis G. Foley*, 59 Agric. Dec. 581 (2000) (holding the default decision was properly issued where the respondents filed their answer 6 months and 5 days after they were served with the complaint and 5 months and 16 days after the respondents' answer was due and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Nancy M. Kutz* (Decision as to Nancy M. Kutz), 58 Agric. Dec. 744 (1999) (holding the default decision was properly issued where the respondent's first filing in the proceeding was 28 days after service of the complaint on the respondent and the filing did not respond to the allegations of the complaint and holding the respondent is deemed, by her failure to file a timely answer and by her failure to deny the allegations of the complaint, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Anna Mae Noell*, 58 Agric. Dec. 130 (1999) (holding the default decision was properly issued where the respondents filed an answer 49 days after service of the complaint on the respondents and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Jack D. Stowers*, 57 Agric. Dec. 944 (1998) (holding the default decision was properly issued where the respondent filed his answer 1 year and 12 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James J. Everhart*, 56 Agric. Dec. 1400 (1997) (holding the default decision was properly issued where the respondent's first filing was more than 8 months after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re John Walker*, 56 Agric. Dec. 350 (1997) (holding the default decision was properly issued where the respondent's first filing was 126 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Mary Meyers*, 56 Agric. Dec. 322 (1997) (holding the default decision was properly issued where the respondent's first filing was 117 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Dora Hampton*, 56 Agric. Dec. 301 (1997) (holding the default decision was properly issued where the respondent's first filing was 135 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding the default decision was properly issued where the respondent's first filing was 70 days after the respondent's answer was due and holding the respondent is deemed, by its failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the

However, on rare occasions, default decisions are set aside.⁸ I set aside the Chief ALJ's Initial Decision and Order and remand this proceeding to the Chief ALJ for two reasons.

First, Complainant proposed and the Chief ALJ adopted apparently inconsistent

default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged the complaint); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994) (holding the default decision was properly issued where the respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994, and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default decision was properly issued where the respondent failed to file a timely answer and, in his late answer, did not deny the material allegations of the complaint and holding the respondent is deemed, by his failure to file a timely answer and by his failure to deny the allegations in the complaint in his late answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default decision was properly issued where the respondents failed to file a timely answer and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Standards alleged in the complaint); *In re Willard Lambert*, 43 Agric. Dec. 46 (1984) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default decision was properly issued where the respondents failed to file an answer and holding the respondents are deemed, by their failure to file an answer, to have admitted the violations of the Standards alleged in the complaint).

⁸ See *In re Deora Sewnanan*, 60 Agric. Dec. ____ (Nov. 9, 2001) (setting aside the default decision because the respondent was not served with the complaint); *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (Remand Order) (setting aside the default decision, which was based upon the respondent's statements during two telephone conference calls with the administrative law judge and the complainant's counsel, because the respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding that the default decision deprived the respondent of its right to due process under the Fifth Amendment to the Constitution of the United States); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (Remand Order) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and the respondent's license under the PACA had lapsed before service was attempted), *final decision*, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (Order Vacating Default Decision and Remanding Proceeding) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer), *final decision*, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (Remand Order) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because the complainant had no objection to the respondent's motion for remand), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (Order Reopening After Default) (setting aside a default decision and accepting a late-filed answer because the complainant did not object to the respondent's motion to reopen after default).

findings of a dispositive fact. Complainant takes the apparently inconsistent position and the Chief ALJ made the apparently inconsistent findings that Respondent had an Animal Welfare Act license and did not have an Animal Welfare Act license at all times material to this proceeding. Based on the limited record before me, it appears that, if Respondent had an Animal Welfare Act licence at all times material to this proceeding, the Complaint should be dismissed. On the other hand, again based on the limited record before me, it appears that, if Respondent did not have an Animal Welfare Act license at all times material to this proceeding, Respondent has violated section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)) as alleged in the Complaint. Based on the limited record before me, I am unable to reconcile Complainant's apparently inconsistent proposed findings of fact, which the Chief ALJ adopted. Under these circumstances, I find good cause to provide Respondent with a hearing as he has requested (Respondent's Objection to the Proposed Decision and Order at second unnumbered page). A hearing would provide the opportunity to develop a complete record which should clarify the apparently inconsistent dispositive findings proposed by Complainant and adopted by the Chief ALJ.

Second, I set aside the Chief ALJ's Initial Decision and Order because Complainant's proposed order, which the Chief ALJ's adopted, is not clear to me. Specifically, neither Complainant nor the Chief ALJ explains what I find to be a perplexing statement in Complainant's proposed order and the Chief ALJ's Order: "Respondent is disqualified from obtaining a license is suspended for a period of one year" (Proposed Default Decision at fourth unnumbered page; Initial Decision and Order at third unnumbered page).

For the foregoing reasons, the following Order should be issued.

ORDER

The Chief ALJ's Initial Decision and Order is vacated and the proceeding is remanded to the Chief ALJ for further proceedings in accordance with the Rules of Practice.

Respondent may appeal any decision on remand issued by the Chief ALJ by filing an appeal petition in accordance with section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)).
